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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,961	03/26/2004	Michael Todd Harmon		7715
7590 MICHAEL T. HARMON SP#1 1400 S. ELM ST. CANBY, OR 97013			EXAMINER BEISNER, WILLIAM H	
		ART UNIT 1744	PAPER NUMBER	
			MAIL DATE 06/22/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/813,961	HARMON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William H. Beisner	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                  |                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                             | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/26/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|                                                                                                                                  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### *Information Disclosure Statement*

1. The information disclosure statement filed 3/26/2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### *Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference numbers 39 and 52. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: reference number 19. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Specification*

4. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01. Pages 3 and 5 of the instant specification include embedded hyperlinks which are improper for the reasons set forth in MPEP 608.01.

*Claim Rejections - 35 USC § 112*

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 1-11 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. **The claim(s) must be in one sentence form only.** Note the format of the claims in the patent(s) cited.

Claim 1 is indefinite for the following reasons. The claim has not been written as a single sentence. The “means for simultaneously suspending, agitating, and entraining” is indefinite. The claim previously recites a vibrating membrane and air pump which appear to provide the intended function of the recited means. It is not clear if recitation of the additional means is intended to add further structural limitations to the claim. Clarification and/or correction is requested.

Claims 2-4 are indefinite because they recite “The method of claim 1”; however, claim 1 is an apparatus. Since claim 1 is not a method, the further structure of claims 2-4 is not clear.

Claims 5-11 appear to define further structure of the device recited in claim 1, however, it is not clear if the further structures are additional structures of the device or further structural details of the “means” recited in claim 1.

In claim 8, “said mammilated air duct” lacks antecedent basis. Note claim 1 is silent with respect to this specific structure.

In claim 9, recitation of “a preferred number, size, and pattern” is indefinite. The metes and bounds of the claim cannot be clearly determined from the vague claim language.

***Allowable Subject Matter***

7. The following claims drafted by the examiner and considered to distinguish patentably over the art of record in this application, are presented to applicant for consideration:

Claim 12. An apparatus for simultaneously suspending, agitating, and entraining a compost nutrient water culture, comprising:

a beaker having a predetermined cross-sectional shape for containing said compost nutrient water culture, an open top and an open bottom;

a lid and strainer covering said open top;

a vibrating perforated elastic membrane transversely covering the open bottom of said beaker;

a holder for compression sealing of said membrane on the open bottom of said beaker;

a base containing an air pump, wherein the holder mates with the base so as to provide fluid communication between the air pump and the bottom side of said membrane and wherein air provided by said air pump against said bottom said of said membrane, overcomes hydrostatic pressure of said compost nutrient water in said beaker thereby sparging enough air through said perforated membrane and into said compost nutrient water culture to maintain 6 mg of oxygen per liter through out a brewing cycle; and

said base and holder including means for quick connect/disconnect of said fluid communication between said air pump and said bottom side of said membrane.

Claim 13. The apparatus of claim 12, wherein the beaker shape, said membrane and air pump are constructed so as to suspend said compost nutrient water culture assuring full aeration above 6 mg oxygen per liter without settling of particles in lower portions of said beaker.

Claim 14. The apparatus of claim 12, wherein the beaker shape, said membrane and air pump are constructed so as to agitate the compost nutrient water culture to extract adhered microorganisms directly into said compost nutrient water culture.

Claim 15. The apparatus of claim 12, wherein the beaker shape, said membrane and air pump are constructed so as to entrain said compost nutrient water culture where by the reproduction of microorganisms is enhanced.

Claim 16. The apparatus of claim 12, wherein the lower portion of the beaker includes male threads that are engaged by corresponding female threads in said holder.

Claim 17. The apparatus of claim 16, wherein said membrane transversely covers the bottom end of the beaker and is compression sealed by tightening said holder.

Claim 18. The apparatus of claim 17, wherein said holder includes a seat and said membrane has a centrally located portion without perforations acting as a back flow valve when fitted against said seat.

Claim 19. The apparatus of claim 12, wherein said holder is provided with multiple parallel splines protruding from an exterior circumference and said splines mate positively with a corresponding tapered recess in said base.

Claim 20. The apparatus of claim 12, wherein said means for quick connect/disconnect includes a passage in said holder and a mammilated air duct in said base, said air duct including an "O-ring for forming an air-tight seal between said air duct and said passage.

Claim 21. The apparatus of claim 12, wherein said beaker, said holder and said base are separable to facilitate cleaning of the apparatus.

Claim 22. The apparatus of claim 12, wherein the strainer has a mesh size between 80 mesh and 120 mesh.

8. The following is a statement of reasons for the indication of allowable subject matter:

With respect to the reference of Luik (US 4,157,922), while the reference discloses a detachable beaker and base with an air pump, the reference Luik and other prior art of record fails to teach or fairly suggest the use of a vibrating perforated elastic membrane transversely covering the open bottom end of the beaker and compression sealed with a holder that connects with the base.

With respect to the reference of Weuster-Botz et al.(US 6,063,618), while the reference discloses a detachable beaker and base with an air pump, the reference of Luik and other prior art

of record fails to teach or fairly suggest the use of a vibrating perforated elastic membrane transversely covering the open bottom end of the beaker and compression sealed with a holder that connects with the base

With respect to the references of Alms et al.(US 6,649,405); Huhn (US 2002/0108498); and Hussey et al.(US 2003/0113908), while these references disclose compost tea making devices that include aeration devices, including perforated elastic membranes, these references and other prior art of record fails to teach or fairly suggest the use of a vibrating perforated elastic membrane transversely covering the open bottom end of the beaker and compression sealed with a holder that connects with the base.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



William H. Beisner  
Primary Examiner  
Art Unit 1744

WHB